

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	MB Docket No. 14-127
Expanding Online Public File Obligations to)	
Cable and Satellite TV Operators)	

To: The Media Bureau

**JOINT COMMENTS OF
LOCAL AND REGIONAL SMALL RADIO BROADCASTERS**

Local Girls and Boys Broadcasting Corporation, MBC Grand Broadcasting, Inc., North County Communications, LLC, Texas Public Radio, and United Ministries (collectively, the “Local and Regional Small Radio Broadcasters”),¹ by their attorneys, hereby submit comments

¹ Local Girls and Boys Broadcasting Corporation is the licensee of stand-alone commercial FM station WZBG(FM) serving the community of Litchfield, CT. WZBG is the only radio station licensed to serve Litchfield.

MBC Grand Broadcasting, Inc., is the licensee of five commercial radio stations (three FM and two AM) licensed to Grand Junction, CO – KKVT(FM), KMGJ(FM), KMOZ-FM, KNZZ(AM), and KTMM(AM). MBC Grand Broadcasting, Inc., is also the licensee of three additional commercial radio stations serving the communities surrounding Grand Junction – KSTR-FM, Montrose, CO; KGLN(AM), Glenwood Springs, CO; and KNAM(AM), Silt, CO.

North County Communications, LLC, is the licensee of stand-alone commercial AM station KPRL(AM) serving the community of Paso Robles, CA. KPRL is the only AM radio station licensed to serve Paso Robles.

Texas Public Radio is the licensee of five noncommercial FM radio stations – KSTX(FM), San Antonio, TX; KPAC(FM), San Antonio, TX; KTXI(FM), Ingram, TX; KTPR(FM), Snyder, TX; and KVHL(FM), Llano, TX. Texas Public Radio has also been issued a construction permit for new noncommercial FM station KTPD(FM), Del Rio, TX.

United Ministries is the licensee of three noncommercial radio stations serving Grand Junction, CO and its surrounding communities – KJOL(AM), Grand Junction, CO; KJOL-FM, Montrose,

in response to the Public Notice (“PN”) issued on August 7, 2014 in the above-captioned proceeding.

I. Small Radio Stations Operate Under Significant Economic and Regulatory Pressures.

The Local and Regional Small Radio Broadcasters represent a diverse group of radio station licensees serving very different corners of the United States. Two licensees operate stand-alone radio stations – a commercial AM station on the West Coast and a commercial FM station in New England. Another two operate regional groups of stations – one, a regional cluster of noncommercial FM radio stations in Texas, the other a group of commercial AM and FM stations in Western Colorado. Another licensee operates non-commercially in Western Colorado,² as well as a stand-alone noncommercial FM in the Mid-Atlantic. Despite this diversity, they have one thing in common – they are small independently owned radio station operators, and they all serve their local, often small, communities.

Because radio broadcasting is subject to competition from an ever-growing array of substitute services – most notably, satellite and internet radio – many local and regional small stations face significant economic challenges simply to stay on the air providing service to their communities. On top of these challenges, small radio stations are also subject to significant FCC regulations – often the same exact regulations as those applicable to larger market stations owned by huge conglomerates – resulting in increased operating costs.

Rather than impose additional regulatory requirements, the Local and Regional Small Radio Broadcasters respectfully suggest that the Commission’s efforts should instead be focused

CO; and KJYE(AM), Delta, CO. United Ministries is also the licensee of noncommercial FM radio station WBMR(FM) serving the community of Telford, PA.

² All of this licensee’s stations are operated on a noncommercial basis even though its AM stations are not licensed as noncommercial educational stations by the FCC.

on seeking to reduce the already-significant burdens imposed on small radio stations.³ Any move to require online public files for small radio stations would do just the opposite, resulting in even more pressure on local radio operators – and on station employees who are often already pushed to their limits.⁴ Simply put, the costs associated with online public files will have a disproportionate budgetary and human impact on small radio operators since the size of a station’s public file is rarely proportional to the size of the station itself.

II. This Proceeding is About Cable and Satellite Systems – Not Radio.

The PN was issued in response to a Petition for Rulemaking filed on July 31, 2014, by The Campaign Legal Center, Common Cause and the Sunlight Foundation (the “Petition”). The Petition seeks to have the Commission “initiate a rulemaking to expand to *cable and satellite*

³ In fact, the Commission has pledged to carry out President Obama’s mandate to independent regulatory agencies to make their “regulatory program[s] more effective or less burdensome in achieving the regulatory objectives.” *Presidential Executive Order 13579*, Regulation and Independent Regulatory Agencies, available at www.whitehouse.gov/the-press-office/2011/07/11/executive-order-regulation-and-independent-regulatory-agencies. In expressing his support for the President’s Executive Order, then-FCC Chairman Julius Genachowski stated: “Since my first day as Chairman, I have made regulatory reform a top priority, improving FCC processes and decisions to support innovation, economic growth, and America’s global competitiveness . . . Shortly after the President’s initial Executive Order, I directed FCC staff to follow the spirit of the Order. We had already conducted retrospective reviews, and incorporated cost-benefit analysis into our decision-making.” See www.whitehouse.gov/blog/2011/07/11/president-s-executive-order-improving-and-streamlining-regulation-independent-regula.

⁴ The Commission is obligated under the Regulatory Flexibility Act (“RFA”) to study the anticipated impact of extending online public file requirements to small businesses. See 5 U.S.C. § 603. Under the RFA, the Commission must both analyze the economic impact on small entities and consider alternatives to minimize that impact. A small business is defined as one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the United States Small Business Administration (“SBA”). The SBA, in turn, has developed a small business size standard for radio stations, which consists of all such entities having \$35.5 million or less in annual receipts. See 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 515112 (2012). The Local and Regional Small Radio Broadcasters is made up exclusively of small businesses under both the RFA and SBA criteria.

systems the requirement that public and political files be posted to the FCC’s online database.”⁵

The singular focus of the Petition is on the significant amount of political television advertising that is now distributed through cable and satellite (*i.e.*, DBS) systems and that the Commission’s online public file requirement for television stations should extend to *television ads* distributed through cable and DBS systems.⁶

Despite the fact that the Petition makes no mention of expanding the online public file requirements to radio – and in fact, nowhere in the Petition is there a single use of the word “radio” – with a lone sentence, the PN expands the scope of comments sought to include radio stations. But radio is not television, and there has simply been no clamor to add the public files from over 15,000 radio stations across the nation (nearly seven times the number of television stations)⁷ to the Commission’s online database.

Moreover, the Commission has yet to acquire the level of experience with its online public file database needed to make reasonable policy judgments about expanding the online public file requirements to radio stations generally, much less about the impact such an

⁵ *Petition* at 1 (emphasis added). The Petition is available at www.apps.fcc.gov/ecfs/document/view?id=7521751780.

⁶ Although noncommercial radio stations are prohibited by section 399B of the Communications Act from accepting paid political and issue advertising, they do need to maintain a political file for documenting any candidate “uses” that would trigger “equal opportunities” under the Act. See 47 C.F.R. §§ 73.1943 and 73.3527(e)(5). Additionally, noncommercial radio stations must maintain a record in the station’s political file of any candidate requests for time, even if that request must, by law, be denied.

⁷ According to the Commission’s latest data, there are 15,425 licensed radio stations compared to 2,214 (including Class A) licensed television stations. See *News Release*, Broadcast Station Totals as of June 30, 2014 (July 9, 2014), available at www.apps.fcc.gov/edocs_public/attachmatch/DOC-328096A1.pdf.

expansion would have on the finite human and technical resources available to small radio operators.

The Commission's online public file database was launched only two years ago and it was not until July 1, 2014 – not even 60 days ago – that smaller market television stations were required to upload documents to their political files for the very first time.⁸ With such limited experience, especially with smaller market stations – and no experience yet for smaller market stations during a lowest unit charge 60-day general election window,⁹ let alone a Presidential election cycle – it would be highly premature for the Commission to consider adding 15,425 radio stations to the mix at this early stage.

III. Any Expansion of Online Public Files to Radio Stations Should be Gradual, Should Only Apply Prospectively, and Should Include a Liberal Waiver Policy.

Despite all the compelling reasons that the Commission should, in a separate rulemaking proceeding, postpone consideration of any expansion of online public files to any radio station until after the next election cycle, if the Commission should decide to prematurely drag radio into a proceeding that is more properly focused on cable and DBS operators, it should ensure that the expansion does not result in undue regulatory burdens on small radio stations.¹⁰

⁸ *Public Notice*, Media Bureau Reminds Television Broadcasters of July 1, 2014 Online Political File Deadline (April 4, 2014), available at www.apps.fcc.gov/ecfs/document/view?id=7521096823.

⁹ See 47 C.F.R. § 73.1942 (during the 60-day window prior to a general election, candidates are entitled to receive the lowest unit charge of the station for the same class and amount of time for the same period).

¹⁰ The Commission has already delegated authority to the Commission staff to “allow (but not require) radio stations to voluntarily post their public files at such time as staff determines that such an option is feasible and desirable.” *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd 4535, 4586 (2012) (“Second Report and Order”); see also *PN* at note 5. Although the

The Commission should provide adequate notice, of at least a year, to radio stations before any online requirements become mandatory.¹¹ With at least a year's notice, stations could incrementally align their budgets for the increased costs that will be associated with online public files. Stations also need adequate time to develop new procedures for online public files and to train staff in those procedures.

Although television stations were required to upload the contents of their already existing paper public files, the cost associated with such an effort would have a disproportionately significant budgetary impact on small radio station operators with already limited technical and staff resources. In order to minimize the risk of online public file requirements becoming the proverbial "straw that breaks the camel's back" for an already struggling small station teetering on the edge of going silent,¹² the Commission should not require small radio stations to upload

Commission's staff has yet to make this option available to radio stations, the Local and Regional Small Radio Broadcasters support the Commission's effort to permit radio station to voluntarily transition to online public files. In fact, once the staff does make this option available for radio stations, the Commission could gather information from the experiences of those broadcasters who volunteer to maintain their public files online and could then consider those experiences as part of a future rulemaking proceeding devoted to radio.

¹¹ As is already the case with online public files for commercial television stations, letters and emails from listeners and viewers in the public file should be entirely exempt from the online requirements given the privacy concerns raised by making such communications available online. Noncommercial stations are not subject to the same requirements for letters and emails from listeners and viewers. *Compare* 47 C.F.R. § 73.3526(e)(9) with 47 C.F.R. § 73.3527(e)(9).

¹² According to the Commission's Consolidated Database System ("CDBS"), there are currently 281 full-power radio stations (186 FM and 95 AM) that are "licensed and silent." In contrast, not a single full-power television station is listed in CDBS as "licensed and silent." Broadcast station information in CDBS is available at www.licensing.fcc.gov/prod/cdbbs/pubacc/prod/sta_sear.htm.

the contents of existing public files, or at least should provide stations with an extended period during which they could incrementally add those materials to the online file.¹³

In any event, the Commission should also announce that it will provide radio broadcasters with a waiver of any online public file requirements upon a showing that maintaining an online public file would impose an unreasonable burden on a station due either to undue economic hardship or as a result of technical impediments.¹⁴

IV. Conclusion.

The Petition for Rulemaking filed by The Campaign Legal Center, Common Cause and the Sunlight Foundation asks only that the Commission consider a rulemaking to expand the online public file requirements to *cable and satellite systems* without a single mention of radio.

The Local and Regional Small Radio Broadcasters are radio operators. They are proud members of their communities and it is their honor to provide service to their communities through quality radio programming. However, any effort by the Commission to needlessly and hastily include radio stations in this proceeding would have the inevitable impact of diverting

¹³ In the *Second Report and Order*, the Commission required television stations affiliated with the top four national networks (ABC, NBC, CBS, and Fox) licensed to serve communities in the top 50 Designated Market Areas (DMAs) to post political file documents online beginning August 2, 2012, but the Commission exempted all other stations from posting their political file documents to their online public file until July 1, 2014. *See Second Report and Order*, 27 FCC Rcd at 4536-7. In adopting this two-year exemption for smaller market stations, the Commission specifically acknowledged that smaller broadcasters required additional time “to familiarize themselves with the online filing requirements.” *Id.*, 27 FCC Rcd at 4595-96.

¹⁴ *See Second Report and Order*, 27 FCC Rcd at 4559. Not only do many small radio stations serve economically struggling communities but these same communities are often lagging behind the rest of the nation in broadband rollout, thus creating a challenge for stations that would be required to upload large files to the Commission’s public file database. Moreover, there would be marginal benefit – outweighed by significant economic cost – in making station public files available online in communities where listeners have limited Internet access.

already severely limited resources away from small radio stations and their core mission of serving their communities.

Respectfully submitted,

**LOCAL AND REGIONAL SMALL
RADIO BROADCASTERS**

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